Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Indiana Law Journal

Volume 7 | Issue 2 Article 4

11-1931

Recent Legislation Concerning Decedents' Estates

C. V. McAdams
Member, Lafayette Bar

Follow this and additional works at: https://www.repository.law.indiana.edu/ilj

 Part of the Estates and Trusts Commons, and the Legislation Commons

Recommended Citation

McAdams, C. V. (1931) "Recent Legislation Concerning Decedents' Estates," *Indiana Law Journal*: Vol. 7 : Iss. 2 , Article 4.
Available at: https://www.repository.law.indiana.edu/ilj/vol7/iss2/4

This Comment is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.

JEROME HALL LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

COMMENTS

RECENT LEGISLATION CONCERNING DECEDENTS' ESTATES

Chapter 81 of the Acts of 1931 (p. 230) changes the law with reference to the time when claims must be filed against estates and the time when the final account may be filed. This is done by amending sections 86 and 157 of the Estates Act, and being sections 3152 and 3242 of Burns R. S. 1926. There is no emergency or repealing clause, nor is there a saving clause removing pending estates from the control of the act. The act was, by the Governor's proclamation, declared to be in effect July 1st, 1931.

The effect of the act is to shorten the time from one year to six months within which claims against estates must be filed, and to shorten the time from one year to six months in which the final account may be filed on the conditions stated in the act. The time in each case is to be computed from the date of issuing letters, and the completion of the notice of appointment.

It would have been a very simple matter to have inserted a saving clause in the act providing that it should not apply to estates, the settlement of which have been initiated in court at the time the act became effective. To have done this would have relieved the act of the one single question of its proper application to such pending estates.

The filing of a claim against an estate with the clerk is the commencement of an action, the same as if a complaint is filed and a summons issued.

The legislature may at any time change a statute of limitations by either shortening or lengthening the time fixed in the previous law.

The statute of limitations in effect at the time an action is commenced, or a claim is filed against an estate, is the only law on the subject which is then in effect. All other laws on the subject ceased to exist at the time the current act came into effect.

The act having cut in half the time allowed for filing claims against estates, as fixed by the prior law, some may question the power of the legislature to so alter the law which was in effect

when the contract was made, which is the basis of the claim. If any one holds to such view, they are in error. Of course, our Federal and State constitutions each forbid legislation impairing the obligations of contracts, but the courts have never held that a statute of limitations in effect at the time a contract is entered into becomes a part of or an obligation of the contract. These statutes are held by the courts to be a part of the remedy for the enforcement of the contract and may at any time be changed, provided that the right to an efficient remedy is not destroyed, and in this connection, it may be said that the judgment of the legislature as to what is a reasonable time within which an action shall be commenced, would seem to be conclusive on the courts.

As to estates which had been pending for one year or more, when the new act came into operation, the new act has no application as the statute of limitations of one year under the prior law, had expired, and such estates are therefore not affected by the new act, and may be settled at any time.

As to estates initiated less than one year before the new act came into effect, a very different question arises. When such an estate was initiated, the limitations as to filing claims was one year, as fixed by the old act, and creditors of the decedent had a perfect right to rely on that time within which to file their claims and they can not be charged with negligence or loss of right, if they wait until the last day of the year to file their claims. As said before the new act fixing six months as the time limit is the only law now in force. The old act fixing one year ceased to exist on the coming into effect of the new act. Although the legislature may shorten the statute of limitations, the courts have held that when this is done, that parties having had rights of action under the old law of limitations which they have not exercised at the date of the later act, they shall be allowed a reasonable time to sue (or file a claim against an estate) after the coming into effect of the new act. This is not done by virtue of the new act, but by virtue of the inherent power of the court to administer justice when its suitor has not been negligent, but has relied upon an existing law by which his conduct was justified, until the law was changed, presumably without his knowledge, consent, or power to prevent.

The plain purpose of the new act is to make it possible to speed up the final closing of estates, and it should be liberally construed to accomplish that purpose.

Among the purposes of administering estates in court are: the payment of the decedent's debts, the perfecting of titles, the distribution of the estate to the heirs at law, and the execution of the testator's will. When an estate has been properly administered, and an adjudication of final settlement has been entered by the court, all creditors who have not filed their claims are thereby barred from proceeding to collect the same. However, if the creditors have not been given the time allowed by law for presenting their claims, they may have the adjudication of final settlement set aside, the estate reopened, and they may pursue the funds of the estate in the hands of the heirs, or resort to an action on the executor's or administrator's bond. In view of these well known principles, it becomes important that the courts take no risks in determining the time after this act came into effect, which should be allowed for filing claims in estates, the settlement of which have been initiated prior to the new act.

How is a reasonable time to be determined? May each court in the state adopt a different rule? Shall a different rule apply to different estates in the same court, or to different claimants in the same estate? These questions suggest the variations in judicial discretion which would be exercised if all these questions may be answered in the affirmative, and so to proceed would be in total disregard of the desirable rule of uniformity of judicial action throughout the state.

It is the judgment of the writer that we must seek a solution of this question by the adoption of the six months limit fixed by the new law, and add six months from July 1st, 1931, when the act came into effect, to the time that all estates have been pending, six months or less before July 1st, 1931. If this rule is followed as to such estates, no creditor of such an estate can complain for the reason that he is given the same time, six months after July 1st, as is allowed to creditors under the new act, to file claims against estates, the administration of which shall be initiated after the new act took effect.

As to estates pending more than six months before July 1st, additional time should be added to the elapsed time, which will complete a year, thereby giving the claimants in such estates a full year within which to file claims as allowed by the old law.

This arrangement is not making two classes or rules of decision on the same subject, because to add six months, the limit of the new law, to estates pending more than six months, would

be giving to claimants of such estates, more time than was allowed by the old law, or that fixed by the new act.

This rule of decision would result in the following length of time which each estate would be pending. All the figures following below represent months. The first column, the months the estate was pending before July 1st, 1931. The second column, the months to be added. The third column, the months that must elapse from the time the estate was initiated before it can be settled:

1. Months	2. Months	3. Months
11	1	12
10	2	12
9	3	12
8	4	12
7	5	12
6	6	12
5	6	11
4	6	10
3	6	9
2	6	8
1	6	7

In the first six of the above supposed cases, settlement may be made under the one year provision provided for in the new act. In all the other cases, settlement may be made under the new act providing for the same in less than one year.

The new act provides that a final account may be filed in six months. If the estate is not ready for final settlement at the end of six months, but before the end of the year it is in a condition to make final settlement, a reasonable construction of the act to promote its evident purpose will permit the estate to be closed at any time after six months and before a year as indicated in the last five of the supposed cases, as set out above.

The second section of the act suggests some further consideration. It provides that the executor or administrator "may with the consent of the court, in which the estate is pending," file a final account at the end of six months. This provision seems to place the power to proceed at the end of six months in the executor or administrator alone. The court is given no power to order a final settlement to be filed at the end of six months, and the court has the power to deny the right for a final account to be filed at that time. This language does not

mean that the executor or administrator can walk into court and file such an account, but it surely does mean that the consent of the court to file such an account must be first obtained, and this can not be obtained excepting upon a petition for that purpose, which would be a basis for the court's action. Such a petition should recite the facts that the estate is ready for final settlement, and that distribution to the heirs can be made. That all known debts have been paid. That the testator's will has been executed, that there is no pending litigation, and such other pertinent facts as may exist in the particular estate. The court may consent or it may deny the request, and if it is denied, there would be no remedy.

The greater number of propositions announced above are so well known to the seasoned practitioner, that it is unnecessary to cite authority. The others, not so well known, seem to have all been settled by a single case and the cases therein cited and approved. This case was decided by our Supreme Court in 1910, and has not since been cited or discussed on the questions here involved. See, *Sansberry v. Hughes,* 174 Ind. 638.

C. V. MCADAMS.*

---

* Of the Lafayette Bar.